IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2742 OF 2005

IN

SUIT NO. 2408 OF 2005

M/s. Vishal Commercial Corpn. ... Plaintiffs

vs.

Kinsun International Trade
Co. Ltd., & Anr. .. Defendants.

Mr. D.H. Mehta a/w H.R. Shetty
for the plaintiffs.
None for defendants nos. 1 to 5.
Ms. Jyotna Pardhi for defendant no. 6.

CORAM : S.U.KAMDAR, J.

DATE : 25th OCTOBER, 2005.

P.C.

. The present suit is filed by the importer of the goods. The defendant nos. 2 to 4 are the parties. The defendant no. 1 is the foreign supplier. The defendant no. 2 is shipping line. The defendant no. 3 is the former agent. The defendant no. 4 is the local shipping agent. Defendant no. 5 is the custodian of the goods appointed by the Customs Authorities and the

Defendant no. 6 is the Union of India through the department of Customs. The goods are lying in the possession of the said defendant no. 5.

2. It is the case of the plaintiff that for the purpose of business activities they have imported consignment of MALEIC ANHYDRIDE 99% from China. The plaintiff has relied upon the notice dated 24.1.2005. The said goods were handed over to the 2nd defendant and the 2nd defendant has issued a bill of lading dated 17.1.2005 indicating the shipment of the said goods. The said goods have also arrived at Nhava Sheva as early as on 25.2.2005. On arrival of the goods it is the duty of the 3rd defendant to file import general manifest with the Port Trust Authorities so as to enable the importer to file bill of entry for the purpose of clearance of the goods for home consumption. It is the case of the plaintiff that inspite of the fact that the goods have arrived as far back as 25.2.2005 the said defendant no. 3 is not filing the necessary import manifest so as to enable the plaintiff to process the goods by filing the bill of entry for home consumption. Accordingly, the present notice of motion has been taken out for a direction that the Customs Authority should be directed to hand over the goods unconditionally and/or the defendant no. 4 should be directed to pay Rs. 3,86,379/- or that injunction to the

authorities from causing the loss. The motion has been served. Affidavit of service dated 19.10.2005 is taken on record. In the light of the fact that inspite of service of the motion and inspite of notice of today's hearing of the motion, none appears for the defendant no. 5. The learned counsel for the defendant no. 6 states that if the payment of duties is protected then she submits to the orders of the Court. I am of the opinion that necessary relief is required to be granted.

3. In the present case, I am of the opinion that by virtue of the default in filing the import general manifest the plaintiffs are stuck up with goods lying in the port trust authorities godown and are suffering demurrage as well as deterioration of the goods. Thus, it is for the benefits of all that the goods are required to be cleared but the same has to be in accordance with the Customs Act, and, therefore, I direct the Customs Authorities to permit the plaintiffs to file the bill of entry for home consumption and process the same. On payment of all necessary charges and the duties by the plaintiffs including penalty, if any, the defendant no. 6 will permit the clearance of the goods. The plaintiff is also directed to file an undertaking in writing in this Court that in an event if the claim is raised in respect of the said goods then he will satisfy such claim of any party whether it is a

party to the suit or otherwise. Such an affidavit to be filed within seven days from today copy whereof to be furnished to the Customs Authorities. On filing of such undertaking with the Court and on receipt of acknowledged copy, the defendant no. 6 will release the goods to the plaintiff herein.

4. Motion disposed of accordingly. No order as to costs.